

2005-2006
EQC Agency Oversight Subcommittee
Final Work Plan

September 16, 2005

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Information about the 2005-2006 Draft Work Plan

Introduction

The Environmental Quality Council (EQC) has appointed a five-member Agency Oversight Subcommittee to:

1. conduct EQC agency statutory oversight;
2. assist the Council in implementing the EQC's statutory duties; and
3. conduct the HJR 34 Interim Study.

This is the work plan for the Environmental Quality Council Agency Oversight Subcommittee for the 2005-2006 interim. In this document you will find:

- An explanation of how the EQC Agency Oversight Subcommittee plans its work.
- A description of work plan topics assigned to the subcommittee by the EQC or by legislation, the EQC's decision for addressing those topics, and work plan tasks.
- An interim time line.

Subcommittee members:

Rep. Debby Barrett, Co-chair
Rep. Christopher Harris, Co-chair
Mr. Kris Kok
Senator Lane Larson
Senator Jim Shockley

Dillon
Bozeman
Missoula
Billings
Victor

Staff:

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How the EQC Agency Oversight Subcommittee Plans its Work

At its May 2005 meeting, the EQC appointed an Agency Oversight Subcommittee. The EQC allocated a total of .7 FTE to the Agency Oversight Subcommittee. The EQC asked that the subcommittee devote its time to providing general agency oversight and carrying out some of the statutory duties of the EQC with the exception of specific statutory topics that the EQC prefers to be heard before the full Council. The EQC also assigned to the subcommittee the HJR 33 study on community impacts of state and federal superfund sites. Assignment of additional issues to the subcommittee or departures from the approved work plan that require a reallocation of staff resources must be reviewed and approved by the EQC.

The purpose of the Subcommittee workplan is to provide a basic framework that will assist the subcommittee and staff in conducting its work and producing tangible results given the time and

resources available to the subcommittee. The workplan is a flexible document, particularly in the case of this subcommittee's assigned topic of agency oversight. The subcommittee will need to refine its goals and tasks as information is gathered and evaluated and, especially, if additional topics are assigned. Key decision-making points are highlighted in the timeline and under each topic.

The EQC and its subcommittees generally follow these steps to assure a meaningful interim:

1. Subcommittee development and EQC approval of a realistic workplan that becomes the framework for the subcommittee's interim work within the resources allocated by the Council.
2. Selection of topics for review and analysis.
3. Information gathering and identification of issues.
4. Subcommittee findings, analysis of options, and recommendations for policy changes (if any).
5. Full EQC adoption or modification of any subcommittee recommendations.
6. Drafting of legislation (if any) and assignment of sponsors.

Key to any successful EQC interim activity is the active solicitation and participation of the public, the affected or regulated community, and agency comment and involvement.

Agency Oversight Subcommittee Work Plan Topics

HJR 34 Study on the Impacts of Superfund Sites on Surrounding Communities

Source/authority: House Joint Resolution No. 34 (2005) **Legislative Poll Rank:** #16

Background: Concern that superfund sites across Montana have serious impacts on communities and community infrastructure and that lack of timely superfund site cleanup exacerbates those community impacts is the crux of the issue that generated this interim study.

The resolution requests that the EQC:

- (1) inventory and establish a comprehensive list of:
 - (a) superfund sites located in Montana;
 - (b) the current status of cleanup efforts;
 - (c) the decision documents describing site remediation for each site in Montana; and
 - (d) the proposed time frame for completing the cleanup efforts;
- (2) provide alternatives for communities faced with untimely cleanup of superfund sites;
- (3) summarize water, infrastructure, and economic development needs of communities directly effected by superfund site listings;
- (4) identify education alternatives for superfund site impacts on local communities; and
- (5) develop a process for improving communication between local, state, and federal governments when addressing superfund issues.

EQC Action:

The EQC assigned this study to the EQC Agency Oversight Subcommittee. The EQC allocated .20 FTE for this topic.

HJ 34 Work Plan Tasks

- 1. Invite HJR 34 sponsor Rep. Jill Cohenour to address the Subcommittee on the intent behind sponsoring the study.

Who: EQC Staff and Rep. Jill Cohenour
Time line: September 15, 2005

- 2. Department of Environmental Quality (DEQ) and U.S. Environmental Protection Agency (EPA) presentations on the issues and informational requirements of HJR 34.

Who: DEQ and EPA
Time line: September 15, 2005 and January 26, 2006.

- 3. Identify additional issues and information necessary to complete the HJR 34 Study.
- Who: EQC Staff and Subcommittee
Time line: September 15, 2005
- 4. Investigate tax incentives for superfund site clean-up and present that information to the Subcommittee.
- Who: EQC Staff
Time line: January 26, 2006
- 5. Panel discussions, site visits, information gathering, subcommittee discussion. Seek out all parties that may help the subcommittee conduct this study, including potentially liable parties, local government officials, consultants, and state and federal project coordinators. Pick a range of superfund sites (both state and federal) as case studies to examine. Request responsiveness summaries from the Department of Environmental Quality
- Who: Subcommittee, Public, and EQC Staff
Time line: January 2006 through March 2006
- 6. Subcommittee discussion of initial HJR 34 findings and recommendations. Present draft outline of the HJR 34 Study Report at the March 16, 2006 EQC Agency Oversight Subcommittee meeting for Subcommittee review and revisions.
- Who: Subcommittee and EQC Staff
Time line: March 16, 2006
- 7. Present the draft HJR 34 Study Report and legislation (if any) at the May 18, 2006 EQC Agency Oversight Subcommittee meeting for final changes and Subcommittee modification and approval or disapproval.
- Who: Subcommittee and EQC Staff
Time line: May 18, 2006
- 8. Send out draft HJR 34 Study Report for public comment during June 2006.
- Who: EQC Staff
Time line: June 2006
- 9. Review public comment on the Study Report at the July 17, 2006 EQC Agency Oversight Subcommittee meeting. Subcommittee findings and recommendations to the full EQC.
- Who: Subcommittee and EQC Staff
Time line: July 17, 2006
- 10. Full EQC review, rejection, or approval of HJR 34 Study Report and legislation, if any.
- Who: EQC Staff and Full EQC
Time line: September 11 or 12, 2006

EQC General Statutory Duties

Source/authority: Sections 75-1-201, 75-1-208, 75-1-314, 75-1-324, 2-15-1514, 2-15-1523, 75-10-111, 75-10-743, 75-10-913, 75-10-918, and 75-10-927, 77-2-301, 77-5-301, 85-1-203, 85-1-621, 85-2-105, 85-2-350, and 85-2-436.

Background: Following the establishment of the EQC in 1971, the Legislature has occasionally authorized the Council to play a role in some specific programs or activities of state government. These directives are in addition to the more general oversight authorities for environmental programs and policies found in section 75-1-324, MCA. This general authority is arguably sufficient to address the specific programs and policies. However, and particularly for new environmental programs or policies, the Legislature has called upon the EQC to act as its liaison with the executive branch. In the past, the EQC has prioritized these activities as the need for specific oversight changes with interest, time, and circumstance. They are listed as follows:

- 75-1-201 and 75-1-208, MCA - Executive agencies are required to submit copies of environmental review documents prepared in accordance with the Montana Environmental Policy Act (MEPA) to the EQC. The EQC staff has created and maintains a database of MEPA documents. Effective in 2001, a project sponsor may appear before the EQC at a regularly scheduled meeting to discuss issues regarding an executive agency's environmental review of the project.
- 75-1-314, MCA - Three agencies of state government are required to report specific compliance and enforcement information to the EQC on a biennial basis. This is the result of a 1997 EQC interim study. The agencies have provided three reports to date.
- 75-1-324, MCA - This section of law contains the general oversight and policy review and recommendation responsibilities of the EQC. Members are urged to review it in detail. The EQC is directed to gather information concerning conditions and trends in the quality of the environment; to review state programs and activities to enhance or maintain environmental quality; to conduct studies, analyze proposals, and make recommendations concerning environmental issues; and to generally act as the Legislature's source of information and advisor on environmental policy issues and direction.
- 2-15-1514, MCA requires participation of a Legislative Services Division employee on the natural resource data system advisory committee. This has typically been assigned to the EQC staff on an as needed basis.
- 2-15-1523, MCA requires the participation of a representative of the Legislative Services Division on the Groundwater Assessment Steering Committee. This has typically been assigned to the EQC staff on an as needed basis.
- 75-10-111, 75-10-913, 918, and 927, MCA all require EQC involvement and review of the state solid waste management plan and participation in the Megalandfill Siting Act review process. The DEQ has developed a state solid waste management plan that is under revision this year. There have been no megalandfill siting applications since the law was enacted in 1991.
- 75-10-743, MCA is the statute addressing the Orphan Share State Special Revenue Account. Language added to the statute during the 2005 session requires the DEQ to report to the EQC quarterly during calendar years 2005, 2006, and 2007. New language also provides that if investigations indicate the need for additional information the DEQ

shall prepare a report identifying the rationale and estimated costs for additional work and present it to the EQC during the spring of 2007.

- 77-2-301 *et. seq.* , MCA will include a new requirement authorized by HB 223 (2003 session) that the DNRC submit a report to the EQC by July 1, 2008 regarding the status of the state land banking program.
- 77-5-301 *et. seq.*, MCA is the Streamside Management Zone law. The statement of intent for the enabling legislation requires the DNRC to periodically evaluate and report on the implementation of the act to the EQC.
- 85-1-203, 85-2-105, and 85-2-436, MCA all relate to obligations of the EQC to participate in or receive and review information on water policy issues including water leasing information from the DFWP. More detail is provided in the draft work plan narrative on Water Policy.
- 85-1-621, MCA requires the DNRC to submit a biennial report to the EQC that describes the status of the Renewable Resource Grant and Loan Program financed with funds from the Resource Indemnity Trust.
- 85-2-350, MCA requires the Clark Fork River Task Force to report the EQC annually.

EQC Action: The EQC created the Subcommittee on Agency Oversight to address topics assigned by the Council and to generally implement and the EQC's statutory duties. The Council will fulfill its statutory obligations for water issues through the EQC Study Subcommittee and the full Council.

EQC Statutory Duties Work Plan Tasks

- ___ 1. Maintain MEPA document database.

Who: EQC Staff

Time line: Throughout interim

- ___ 2. Agency presentations of the compliance and enforcement reports.

Who: DEQ, DNRC, and Dept. of Ag

Time line: March 16, 2006

- ___ 3. DEQ update on orphan share account activities.

Who: DEQ staff

Time line: September 15, 2005

- ___ 4. Streamside management zone law implementation report.

Who: DNRC Staff

Time line: May 18, 2006

- ___ 5. Renewable resource grant and loan program report.

Who: DNRC

Time line: July 17, 2006

- ___ 6. General implementation of 75-1-324, MCA (EQC general statutory duties).

Who: EQC Staff and Subcommittee

Time line: Throughout interim

EQC General Agency Oversight Statutory Duties

Source/authority: 2-4-401- 412; 5-5-202, 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory oversight authority and has historically used that authority to review agency activities on an issue by issue basis as the need arises. In 1999, 2001, and 2003, the Legislature further expanded and defined the EQC's oversight authority to include draft legislation review, administrative rule review, program evaluation, and monitoring the functions of the DEQ, DNRC, and the DFWP. The EQC's oversight of these agencies includes entities that are attached to these agencies.

The Legislature's actions in 1999, required a more systematic approach to agency oversight, especially in terms of administrative rule review. Pursuant to 2-4-401-412, MCA, the Council has the authority to request records; make recommendations for adoption, amendment, or rejection of a rule; institute, intervene in, or otherwise participate in rulemaking proceedings; review the conduct of administrative proceedings; request a legislative poll; request an economic impact statement on a rule; or object to violation of authority for a rule.

The EQC is also required to review proposed draft legislation from each of the departments within its jurisdiction. At the end of the interim, the EQC schedules time to review this draft legislation.

Traditionally, the EQC has one or more agency oversight issues on the agenda for each meeting. The Council has also historically allocated the necessary resources to respond to issues as they arise. There are also a number of statutorily required agency reports that are scheduled for presentations before the Council.

EQC Action: The EQC appointed the Agency Oversight Subcommittee and charged the Subcommittee with carrying out many of the EQC's statutory duties as well as the EQC's general agency oversight responsibilities. Specific efforts include the EQC's obligation to act as the rule review interim committee for the DEQ, the DNRC, and the DFWP. Other topics generally left as a responsibility of the subcommittee include a review of EQC's statutory duties, agency compliance and enforcement reporting, MEPA litigation, and other issues assigned to the subcommittee by the EQC.

EQC General Agency Oversight Work Plan Tasks

- ___ 1. Agency program and budget overview presentations

Who: DEQ, DNRC, and DFWP Staff

Time line: September 15, 2005

- ___ 2. Update on the implementation of HB 60 (Meth Lab Cleanup).

Who: DEQ and DPHHS Staff

Time line: September 15, 2005

- ___ 3. Overview of elk and bison management issues before the full EQC.

Who: DFWP
Time line: September 16, 2005

- ___ 3. Agency oversight issues requested by Subcommittee.

Who: DEQ, DFWP, and DNRC
Time line: Throughout interim

- ___ 4. Agency rule review.

Who: EQC Staff
Time line: Throughout interim

- ___ 5. Review of active environmental and natural resource court cases.

Who: EQC Staff
Time line: Throughout interim

- ___ 6. Review agency legislative proposals. This review is conducted before the entire EQC.

Who: DEQ, DNRC, and DFWP
Time line: July and September 2006

- ___ 7. Final decision of findings, recommendations, and any legislation by the by the subcommittee regarding any oversight issue.

Who: EQC Staff
Time line: May 18, 2006

- ___ 8. Send out draft findings, recommendations, and any legislation for public comment.

Who: EQC staff
Time line: June 2006

- ___ 9. Review public comment on findings, recommendations, and any legislation.

Who: EQC staff and Subcommittee members
Time line: July 17, 2006

- ___ 10. Full EQC review, rejection, or approval of findings, recommendations, and any legislation.

Who: EQC staff and full EQC
Time line: September 11 or 12, 2006

EQC Educational Publications Obligations

Source/authority: 75-1-324, MCA.

Background: Under MEPA (75-1-324), the EQC has broad statutory authority and the EQC has historically used that authority to produce high quality, easy to understand, objective,

nonpartisan, educational publications, in addition to the study reports that the EQC produces during any given interim. These educational publications are well regarded and are constantly requested by the general public, legislators, state and federal agencies, other states, and industry and conservation groups. Several EQC publications have received national awards. The EQC has produced the following educational publications:

- ☆ *Montana Index of Environmental Permits 2004, Fourteenth Edition*

Explanation: This is the EQC's oldest and perhaps most requested publication. It provides a complete list of the permits and licenses needed to conduct activities that may affect the state's environment. The permit index lists the permits required, the permitting agencies, and the statutes and rules that regulate each permit. The permit index has been updated every interim for 28 years.

- ☆ *A Guide to Montana Water Regulation (produced in 1996 and updated in 2002)*

Explanation: This publication is a primer that addresses water quality regulation in Montana. The impetus for producing this guide (which is one of the first educational primers that the EQC produced for a specific subject matter area) came from numerous requests from the general public and legislators for an easy to understand reference booklet on the complex area of water quality.

- ☆ *Water Rights in Montana (produced in 2004)*

Explanation: This publication is a primer on Montana's water right system. The EQC and the Department of Natural Resources and Conservation teamed up to produce this publication that distills a very complex area of law and regulation into a very easy to understand and readable document.

- ☆ *A Guide to the Montana Environmental Policy Act (produced in 1998 and updated in 2002)*

Explanation: The EQC was created by the Montana Environmental Policy Act (MEPA) in 1971. The EQC has historically been very active in MEPA implementation and oversight and in developing policy related to MEPA. This guide was produced by the EQC at the request of Montana citizens, legislators, agencies, and industry and conservation groups in order to provide an easy to understand reference guide on MEPA.

- ☆ *Eminent Domain in Montana (produced in 2001)*

Explanation: This handbook was one of several products that the EQC produced as a result of its 1999-2001 interim study on eminent domain in Montana. This handbook was developed in order to help Montana Citizens better understand Montana's eminent domain laws.

- ☆ *The Electricity Law Handbook: A Montanan's Guide to Understanding Electricity Law (produced in 2002 and updated in 2004)*

Explanation: This handbook was produced by the EQC during the 2001-03 interim. The EQC felt that given the magnitude of the issues surrounding electricity and especially electricity deregulation in the state, that an educational publication was needed to help Montanans sort out the morass of laws that deal with electricity.

- ☆ *Understanding Electricity in Montana: A Guide to Electricity, Natural Gas and Coal Produced and Consumed in Montana (produced in 2002 and updated in 2004)*

Explanation: This guide was produced by the DEQ energy staff for publication by the EQC last interim. It provides statistical and explanatory information on electricity supply, demand, and transmission and information on coal and natural gas supply and demand.

With some exceptions, the EQC's educational publications usually become outdated every interim as a result of legislative changes or administrative changes in the particular areas of law or rule that the publication addresses. Sometimes the updates require minimal time and effort, but some updates like the permit index require a more intensive effort.

Council Action: With the exception of the publication *Water Rights in Montana*, the EQC assigned publication updates to the Agency Oversight Subcommittee. The publication *Water Rights in Montana* was assigned by the EQC to the Study Subcommittee to be updated during this interim. Other publications that are scheduled to be updated this interim include the *Montana Index of Environmental Permits*, and *A Guide to the Montana Environmental Policy Act*.

EQC Publication Work Plan Tasks

- 1. Update the *Montana Index of Environmental Permits* and *A Guide to the Montana Environmental Policy Act*.

Who: EQC Staff

Time line: Between January 26, 2006

- 2. Subcommittee review of publications.

Who: Subcommittee members

Time line: Between January 26, 2006

Draft 2005-2006 Work Plan Time line

General 2005-2006 Interim Time Line:

[Note: This general time line is provided to give you an idea of the time line that the Subcommittee's activities will need to fit into in order to complete the work on time. The time line shows the last date for completion of certain items. Additional EQC and or subcommittee meetings may be scheduled if time and budget allow.]

May 23-24, 2005	<u>EQC Meeting.</u> Interim work plan prioritization and EQC organizational meeting.
September 15, 2005	<u>Subcommittee Meeting in conjunction with EQC meeting.</u> Adoption of detailed work plan.
January 26, 2006	<u>Subcommittee Meeting in conjunction with EQC Meeting.</u>
March 16, 2006	<u>Subcommittee Meeting in conjunction with EQC Meeting.</u> If public comment is desired on an EQC report, the contents of the <i>draft</i> report should be determined by this date.
May 18, 2006	<u>Subcommittee Meeting in conjunction with EQC Meeting.</u> Last date to suggest revisions to a <i>draft</i> document if a 30 day public comment period is desired. Comments received from the public will be compiled by staff and distributed to the Subcommittee 1-2 weeks before the July 17, 2006 meeting.
July 17, 2006	<u>Subcommittee Meeting in conjunction with EQC Meeting.</u> Last subcommittee meeting. Final approval of recommendations, any proposed legislation, final report. Report to the full EQC.
September 11-12, 2006	<u>EQC Meeting.</u> Final approval of recommendations, any reports, proposed legislation. Selection of bill sponsors. Development of strategy. Review agency bill draft requests. Council interim work must be completed prior to September 15, 2006.

Specific 2005-2006 EQC Agency Oversight Subcommittee Interim Time Line:

2005

September 15, 2005

- HJR 34 presentations
- Agency program and budget presentations
- Update on the implementation of HB 60 (Meth Lab Cleanup)
- Agency rule review
- Review of active court cases
- Approval of work plan
- Public input

2006

January 26, 2006

- HJR 34 panel discussion and possible site visit
- Review *A Guide to the Montana Environmental Policy Act* and *Montana Index to Environmental Permits* revisions
- Agency rule review
- Review of active court cases
- Review of progress related to specific issues identified in the work plan
- Review work plan -- make changes if necessary
- Identify areas where more information is needed
- Public Input

March 16, 2006

- Subcommittee discussion of initial HJR 34 findings and recommendations
- Review of draft HJR 34 Study Report outline
- Agency presentations of compliance and enforcement reports
- Agency rule review
- Review active court cases
- Review of progress related to specific issues identified in the work plan
- Review work plan -- make changes if necessary
- Public input

May 18, 2006

- Review draft HJR 34 Study Report and legislation (if any). Subcommittee modification, approval, or disapproval of the Report
- Review and discussion of findings, recommendations, or proposed legislation (if any) regarding agency oversight issues and EQC statutory duties
- Streamside management zone law implementation report
- Agency rule review
- Review active court cases
- Review of progress related to specific issues identified in the work plan
- Review work plan -- make changes if necessary
- Public input

June 1, 2006

- Send out HJR 34 Study Report for public comment
- Send out any findings, recommendations or legislation regarding agency oversight issues or EQC statutory duties for public comment

July 17, 2006

- Review public comment regarding HJR 34 Study Report
- Review public comment regarding any other Subcommittee findings, recommendations or legislation
- Last date to revise draft reports and concepts for proposed legislation
- Renewable resource grant and loan program report
- Agency rule review
- Review active court cases
- Public input

July 24 - August 22, 2006

- Distribute draft reports and concepts for proposed legislation for 30 day public review and comment, if desired

August 29, 2006

- Compile and distribute comments on draft documents to subcommittee members

September 11-12, 2006 (EQC meeting)

- EQC final decision on the HJR 34 Study Report and proposed legislation, if any
- EQC final decision on any other Subcommittee findings, recommendations, and any legislation
- Selection of bill sponsors. Development of strategy.
- Briefing on potential legislative proposals (if any) related to subcommittee topics